



**RIGA  
GRADUATE  
SCHOOL OF  
LAW**

# THE MINOR WAS DRESSED IN WHITE: Child Marriage as a Legal Cultural Right for Conservative Christians in the USA

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## DECLARATION OF HONOUR:

We declare that this course paper is our own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

RIGA, 2018

## Summary

Child marriage is a cultural tradition in which an individual under the age of majority is married to either someone of the same age, or an individual who can be classified as an adult. The International community has deemed this practice to be a harmful cultural practice, which perpetuates discrimination against women and has detrimental effects upon female minors who are disproportionately effected by the continuation of this practice. However, within the United States of America, the practice of child marriage has been legally continued through the application of conservative Christian beliefs within federal and state legislation. This thesis will look at the manner in which marriage laws of the USA can be amended to accommodate the religious cultural rights of conservative Christians and the individual rights of minors.

Within the first part, this thesis will establish the legal parameters of child marriage on both an international level and within USA legislation. This will be concluded on the international level through the utilization of various international agreements and conventions, the Universal Declaration on Human Rights, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration, the Convention on Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child, thus establishing the international human rights perspective as pertaining to child marriage. Following this, the thesis looks at the definitions of marriage and minors within USA federal and state statutes, finding that the lack of age restrictions upon the institution of marriage allows for the continuation of child marriage. This will be found to be due to parental rights being upheld over those of minor's as defined through Supreme Court case law upholding the rights of parents to raise a child as they determine to be in the best interest of the child based upon their religious views.

The second portion of the thesis will extrapolate upon the importance of religion in the lives of citizens as viewed through the framework of conservative Christianity. It will analyze the importance of Christianity within the creation of federal and state legislation as pertaining to the demographics of the USA Congress being predominately skewed towards those who identify as Christian. As such, this population has a prevalent impact upon legislation as pertaining to the institution of marriage, and more specifically child marriage, due to this institution being viewed as a cultural right which has been exemplified through Supreme Court case law thus showing the cultural significance of marriage to those who identify as conservative Christians.

In the final portion of the thesis, the manner in which the institution of child marriage is viewed within these two points of contention will be analyzed as to the manner in which they can be brought together to find the best solution. This will be divided between the domestic legislative recommendations and the methods by which the USA can reconcile with the international community. Thus these findings will culminate in the conclusion that while the USA is within its rights to protect the institution of marriage on a cultural basis, the rights of individual minors should be held in higher esteem than the rights of conservative Christians to the institution of marriage.

## **Abstract**

Under UN interactional conventions, child marriage has been found to be a harmful cultural practice. Despite the international precedence, the United States of America (USA) allows the practice to legally continue. This thesis will focus on the continuation of child marriage within conservative Christian communities within the USA, where the abolition of this practice would be considered unconstitutional state intervention within the sacrament of marriage. This is due to state interference being seen as an infringement of the conservative Christian community's cultural rights and freedom of religion. This thesis will analyze the conjunction between international law and the use of legal loopholes by the conservative Christian community within the USA as a direct correlation to the perpetuation of child marriage, which is a violation of the rights of the child under international law as well as of various human rights norms.

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## Introduction

Within the international community, the concept of minors marrying under the age of majority has been found to be a human rights violation. The practice predominantly impacts girls, depriving them of their independence and in many cases forcing them out of educational possibilities due to familial duties which begin to take precedence with the choice to marry at a young age. The practice of child marriage is not exclusively found in developing countries or specific religions; it is also a prevalent problem within the United States of America (USA). In recent years, there have been legislative developments regarding who is able to obtain the legal right to marry in the USA, however, there has been a failure to continue the analysis of marriage laws and stanch the prevalent issue of legal unions between minors and adults upon the same scale.

This thesis will focus on marriages between a minor and a legal adult which occur within conservative Christian communities as stipulated by the laws of the USA. The focus will be on these groups within the USA which perpetuate the practice of marrying female minors to male adults and prevent the abolition of this practice due to their belief that it would interfere with their cultural rights and freedom of religion. The thesis will look at the rights of children, international cultural law, and marriage laws within the USA, thus analyzing the manner in which these legal provisions intercede upon each other, creating loopholes within both USA and international laws.

The first section of the thesis will analyze the conjunction between international law and USA law regarding marriage and minors. There will be an introduction of the Universal Declaration of Human Rights (UDHR) and prominent international conventions, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (CCMMAMRM), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) as these documents pertain to child marriage. Following this there will be a brief section regarding the manner in which the USA ratifies international treaties and their impact on USA national laws upon ratification. This section will then look at the USA's definition of marriage, minors, and consent as found in federal and state law as well as the rights of parents and minors in relation to the concept of child marriage within the USA. After this, there will be a section regarding the intersection of the USA's domestic and foreign policies in regard to the practice of child marriage.

In the second section, the thesis will look at the cultural right to marriage. The legal importance of Christianity within the United States and the groups' influence upon the international stance of the USA on child marriage will briefly be discussed, along with the viewpoint taken within the domestic political sphere. USA Supreme Court decisions regarding the right to enter into a marital association with another individual will be ascertained as to their significance within the question of child marriage being classified as a cultural right, thus analyzing the criteria by which these marriages should be protected under international cultural law. This section will focus on the effects and implications of these laws upon marriage and the fundamental

implications of United States allowing these unions will be determined. This section will go on to analyze the sociological factors which contribute to the prevalence of the child marriage phenomena in the United States.

The third section will focus upon legal recommendations the USA should implement in order to reach an amicable solution for both the religious and international community. There will be three recommendations for legislative changes to be made on a domestic scale regarding, the complete ban of marriage under the age of majority, a social and religious outreach initiative and lastly a combined approach which focuses upon the causes and consequences of child marriage. Regarding the international sphere, there will be a three-step program analyzed by which the USA first acknowledges the prevalence of child marriage within the nation, followed by the ratification of the above mentioned international treaties and the application of the USA's foreign policy initiative regarding child marriage is applied domestically. Each of these recommendations will be analyzed regarding the benefits which would be achieved and potential drawbacks which may occur upon their application.

The culmination of the thesis will find a solution which will be seen by the international community as one benefiting both sides of the debate, in addition to creating legal protection for those who are under the age of majority. Through this thesis, the reader will find that the existing marriage laws in the USA encompass conservative Christian ideals allowing the infringement of the individual rights of minors. Cultural respect is an important aspect of the development of any country, the Christian communities' use of legal loopholes found within the exceptions of United States marriage laws can be directly correlated to the perpetuation of the religious tradition of child marriage, which is a violation of the rights of the child under international law as well as of various human rights norms.

## 1. Legal Perspectives

This section will examine the legal definitions which surround the concept of child marriage as encompassed by international agreements and USA national legislation as found in federal and state laws. It will be determined that the definitions provided within international law are ambiguous, thus allowing nation states who are party to these agreements ample room to determine the manner in which national laws are subscribed. The USA is not held under international law to prescribe these definitions into national law, as the USA has signed but not ratified these international conventions due to the determination that the precedents therein would usurp parental rights.

### 1.1 International Definitions

Before delving into the topic of child marriage within the USA, this section will examine the legal definitions set forward by the United Nations (UN) in four significant international conventions, the Universal Declaration of Human Rights (UDHR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (CCMMAMRM). These documents will be analyzed in regard to the manner in which they are applicable to child marriage as they examine the rights allotted to individuals which are violated by this tradition. These international agreements have set forward guidelines depicting the manner by which signatory countries should create national legislation to protect the rights of children within their national jurisdictions. While these conventions are subject to ratification on the national scale, they provide international statutes for countries to fulfill their sovereign obligations to those who reside within their borders.

#### 1.1.1 Universal Declaration of Human Rights (UDHR)

The UDHR does not explicitly mention the concept of child marriage, however, there are specific articles which are applicable to the creation of legislation which would, in turn, prevent the marriage of those under the age of majority. Article 16.1 of the declaration states, “Men and women of full age [...] have the right to marry and to found a family.”<sup>1</sup> Due to the UN’s lack of definition regarding when an individual has attained the ‘full age,’ the subjection of when an individual has reached the age of majority remains at the discretion of the sovereign state. For the purpose of this paper, full age will be defined as the age by which upon an individual’s ascension will be attributed full legal capacity and rights within their respective country. As such, those who are under this age will be considered as minors, therefore these individuals do not yet have the specific right to marry.

In addition, under Article 16.2 the declaration states,

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<sup>1</sup>United Nations General Assembly. Article 16.1. *Universal Declaration of Human Rights*. 10 December 1948, Res. 217 A (III).



“marriage shall be entered into only with the free and full consent of the intending spouses.”<sup>2</sup>

In order for an individual to grant genuine consent, they must first be recognized under national law as having the full legal capacity of an adult. A minor does not yet possess this capability due to their lack of reaching the age of majority as defined by the nation in question, therefore making it impossible for these individuals to grant their ‘full consent’ to enter the institution of marriage.

### **1.1.2 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (CCMMAMRM)**

This convention was written as a subsidiary agreement to the above-mentioned UDHR. As pertaining to Article 16 with a specific mention of

“ [...] certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the charter the the United Nations and in the Universal Declaration of Human Rights [...] reaffirming that all states [...] should take all appropriate measure with a view of abolishing such customs [...] eliminating completely child marriages [...] ”<sup>3</sup>.

This principle creates an international law standing regarding the institution of child marriage, however the purpose of this sentiment is diluted through Article 2 of the convention which requests states to specify a minimum age for marriage by which it would be illegal for those below the age of majority to grant full consent to marriage, “except where a competent authority has granted a dispensation as to age [...]”<sup>4</sup>. This statement can be interpreted as a loophole in international law, thus granting states which are signatories to the convention and have ratified it into national law, the ability to circumvent the minimum age restriction legally within the international sphere so long as the reasoning is viewed as “in the interest of the intending spouses.”<sup>5</sup>. As such while the convention states the intention of the complete eradication of child marriage, it maintains the right for states to perpetuate the practice where the nation in question deems it to be appropriate.

### **1.1.3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

While this convention was enacted with the intent to prevent discrimination against women, the use of the word “women” indicates that the individual in question has attained the full legal capacity of being an adult, however this convention does not make this distinction clear thus

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<sup>2</sup> Ibid. Article 16.2

<sup>3</sup> United Nations General Assembly. Article 16. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*. 7 November, 1962. Res. 1763 A (XVII).

<sup>4</sup> Ibid, Article 2.

<sup>5</sup> Ibid.

leaving it up to the states party to the convention to make this differentiation for themselves<sup>6</sup>. Article 16.1(b) reiterates that in order for a marriage not to be discriminatory against women as pertaining to international law there must be “free and full consent” of the individual upon choosing a spouse<sup>7</sup>. This refers to the above-mentioned restriction upon those under the age of majority to grant consent due to their lack of legal capacity under the law of a nation. Unlike the previous two conventions discussed, Article 16.2 of CEDAW, stipulates that, “the betrothal and marriage of a child shall have no legal effect”<sup>8</sup>.

Unlike CCMMAMRM there is not a caveat which allows countries to circumvent the implication of the article through the creation of legislation which lowers the age of majority to grant individuals who would have before been considered minors, full legal capacity under national law.

#### **1.1.4 UN Convention on the Rights of the Child (CRC)**

Under Article 1 of the CRC, the international community has determined an individual is a minor until the age of 18<sup>9</sup>. There are provisions regarding the protection of children against discrimination and the protection of their economic, social and cultural rights. However, in terms of child marriage, there is no specific article pertaining to the prevention of the cultural practice. Therefore the international community must rely upon the articles mentioned in the previous international agreements, in which marriage must be between two fully consenting individuals and that marriages including a minor are not legally binding in the eyes of international law.

The international community made a large leap in protecting the rights of children through the creation of the CRC, however, the lack of protection against harmful practices in such explicit terms under the convention demonstrates the areas in which the protection of children needs to be expanded. The rights allotted to these individuals do create protections against the causes and effects which the institution of child marriage has upon them. This is seen in Article 2.2<sup>10</sup> in which states parties to the convention must take measures to protect children against forms of discrimination based upon the beliefs of the parents or legal guardians<sup>11</sup>. As such this article can

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<sup>6</sup> Burris, Camellia. “Why Domestic Institutions Are Failing Child Brides: A Comparative Analysis of India's and the United States' Legal Approaches to the Institution of Child Marriage.” *Tulane Journal of International & Comparative Law*. Vol. 23, 2014. pp.151-175. p. 157.

<sup>7</sup> United Nations General Assembly. Article 16.1(b). *Convention on the Elimination of All Forms of Discrimination Against Women*. 18 December 1979. New York.

<sup>8</sup> Ibid. Article 16.2.

<sup>9</sup> United Nations General Assembly. Article 1. *Convention on the Rights of the Child*, 20 November 1989. Res. 44/25.

<sup>10</sup> Ibid. Article 2.2.

<sup>11</sup> Supra 6. p. 156.

be utilized in the sense that this practice infringes upon the right of children to freely choose who they want to marry and when that marriage occurs<sup>12</sup>.

### 1.1.5 USA Ratification of International Treaties

In order for states to be parties to the above mentioned international conventions, a state representative must sign the document, following which the state legislature must ratify it on the national scale by the means depicted within their national laws<sup>13</sup>. While a state may sign a convention, it does not constitute a promise to ratify it within the domestic sphere<sup>14</sup>. Through the process of ratification, these states create national legislation formulated through the framework of the given convention. Of the aforementioned conventions, the USA been a signatory state of each one, yet been unable to ratify the international provisions into national law. However, due to the UDHR being accepted by the General Assembly of the UN, the USA is held responsible for the provisions stipulated by this agreement as they pertain to the application of international law into national regulations<sup>15</sup>.

Within the USA there are two main levels of laws, federal law, which creates national laws based upon statutes the Congress deem to be in the best interest of the nation as a whole, and state law, which is tailor-made for citizens which reside within each state. According to Article 2 of the USA Constitution, the president has the power to make international treaties provided two-thirds of the Senate concur that the provisions within them are necessary to the nation<sup>16</sup>. There is a high of scrutiny as article 6 of the Constitution states that ratified treaties become supreme law of the land<sup>17</sup>, on the same standing as the constitution, thus usurping national laws which were may have been passed before or after ratification<sup>18</sup>. This law regarding ratification has made it difficult for international treaties regarding human rights and the rights of children to be made into national law, Due to the bipolar nature of the USA's political parties, the passage of these conventions has hit roadblocks as a significant fraction of the Senate believes that their passage

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<sup>12</sup> Bilson, Andy and Sue White. Representing Children's Views and Best Interests in Court: An International Comparison. *Child Abuse Review*, Vol.14. 2005. 220-239. p. 230.

<sup>13</sup> Supra 6. p.171.

<sup>14</sup> "What Is the Difference between Signing, Ratification and Accession of UN Treaties?" *United Nations*. Accessed April 16, 2018. Web.  
<http://ask.un.org/faq/14594>.

<sup>15</sup> Calciano, Elizabeth M. "United Nations Convention on the Rights of the Child: Will It Help Children in the United States." *Hasting International & Comparative Law Review*. Vol.15, 1992. pp. 515-534. p. 526.

<sup>16</sup> U.S. Const. Art. 2.

<sup>17</sup> U.S. Const. Art. 6.

<sup>18</sup> Murray, Ian. "Why America Doesn't Ratify Treaties." *Competitive Enterprise Institute*. October 17, 2007. Accessed April 16, 2018. Web.  
<https://cei.org/content/why-america-doesnt-ratify-treaties>.

would infringe upon the sovereignty of the USA as it surpasses the states right to self-determine familial policies<sup>19</sup>.

## 1.2 USA Legal Definitions

As international law claims that it is the prerogative of nations to determine the age of majority, the definitions as pertaining to the USA will be analyzed within this section. The federal and state definitions of ‘marriage,’ ‘minors,’ and ‘consent’ will be analyzed as they are found in USA regulations. It will be found that these definitions are equally as vague when comparing them to international law, as well as being contradictory between both levels of legislation.

### 1.2.1 Definition of Marriage

Under the current federal legislation, there is not a regulated definition of marriage. In 1996 the Defense of Marriage Act (DOMA) was passed which defined “marriage” and “spouse” as the “legal union between one man and one woman as husband and wife”<sup>20</sup>. However, following the supreme court case *Windsor vs. US*, this legislation was struck down as it was determined that it is unconstitutional for the federal government to define these terms in a manner which excludes couples which are not heterosexual<sup>21</sup>. While the federal government was determined to not have the constitutional right to define what constitutes “marriage,” it also did not attempt to define at what age an individual is allowed to be married, leaving this within state jurisdiction<sup>22</sup>.

As determined by 26th Amendment of the USA Constitution, 18 is considered the age at which citizens gain the right to vote<sup>23</sup>. As such, many states stipulate that this is the age of majority thus individuals gain full legal capacity upon their ascension to this age. Each state stipulates the age at which an individual is able to marry, in addition to the exceptions the age limitation if they are found to be applicable. These exceptions include that with parental approval, judges approval or in the case of pregnancy a minor is allowed to be married at any age<sup>24</sup>. Only 23 states stipulate an age floor, in which a minor is unable to be married if they have not reached that age. In the other

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<sup>19</sup> Attiah, Karen. “Why Won’t the U.S. Ratify the U.N.’s Child Rights Treaty?” *The Washington Post*. November 21, 2013. Accessed April 16, 2016. Web. [https://www.washingtonpost.com/blogs/post-partisan/wp/2014/11/21/why-wont-the-u-s-ratify-the-u-n-s-child-rights-treaty/?noredirect=on&utm\\_term=.a759845e4530](https://www.washingtonpost.com/blogs/post-partisan/wp/2014/11/21/why-wont-the-u-s-ratify-the-u-n-s-child-rights-treaty/?noredirect=on&utm_term=.a759845e4530).

<sup>20</sup> U.S. Congress, House, *Defense of Marriage Act of 1996*, H.R. 3396, 104th Cong., 2nd seas., introduced in House 3 January, 1996. <https://www.gpo.gov/fdsys/pkg/BILLS-104hr3396enr/pdf/BILLS-104hr3396enr.pdf>

<sup>21</sup> *Windsor vs. US*. 507 US\_(2013).

<sup>22</sup> Hagues, Rachel. “The U.S. and the Convention on the Rights of the Child: What’s the hold-up?” *Journal of Social Work*. 13(3), 2013. pp. 319-324. p. 321.

<sup>23</sup> U.S. Const., amend. XXVI, § 1.

<sup>24</sup> “Falling through the Cracks: How Laws Allow Child Marriage to Happen in Today’s America.” *Tahirih Justice Center*. August 2017.

27, this age floor does not exist therefore allowing a minor who fits the criteria set within state law the ability to enter a marriage at any age<sup>25</sup>.

Should a minor want to get married but does not fulfill the criteria within their own state due to an age floor, lack of parental or judicial approval they have the ability to go across state borders to a county which may be more favorable to granting the couple the ability to marry<sup>26</sup>. The ability to evade the marriage laws of one state in favor of another is due to the US Constitution's Full Faith and Credit Clause<sup>27</sup>, in which the public acts, records and judicial proceeding which occurs in one state are recognized and enforced in all of them<sup>28</sup>. While some states stipulate that a marriage which goes against public policy is void within that state there have not been prominent court cases to dissuade from the practice in regards to child marriage<sup>29</sup>.

### 1.2.2 Definition of Minors and Consent

Within the context of federal law, the definition of minor is codified in two legislative acts; 18 U.S. Code § 2243- Sexual Abuse of a Minor or Ward in which minor is an individual

“who has attained the age of twelve years but has not yet attained the age of sixteen years”<sup>30</sup>

and 18 U.S. Code § 2256- Definitions for Code Chapter 110- Sexual Exploitation and Other Abuse of Children which states “the term ‘minor’ means any person under the age of eighteen years”<sup>31</sup>. Both of these acts are in relation to sexual relationships with minors which are exploitive such as within pornography as stipulated in 18 U.S. Code § 2256<sup>32</sup> or as pertaining to having a sexual relationship with an adult who is four or more years older than the minor in question as codified in 18 U.S. Code § 2243<sup>33</sup>. While it may appear that 18 U.S. Code § 2243 would protect individuals against child marriage, the defenses from prosecution of this federal crime list, “that the persons engaging in the sexual act were at that time married to each other,<sup>34</sup>”

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<sup>25</sup> “Understanding State Statutes on Minimum Marriage Age and Exceptions.” *Tahirih Justice Center*; November 2016.

<sup>26</sup> Bix, Brian H. “State Interests in Marriage, Interstate Recognition, and Choice of Law.” *Creighton Law Review* Vol.38, 2005. pp. 337-351. p. 341

<sup>27</sup> U.S. Const., Art. IV § 1.

<sup>28</sup> Supra 26. p.343.

<sup>29</sup> Grossman, Joanna L. “ Interstate Marriage Recognition: When History Meets the Supreme Court”. *Verdict Justia*. April 28, 2015. Accessed April 16, 2018. Web.  
<https://verdict.justia.com/2015/04/28/interstate-marriage-recognition-when-history-meets-the-supreme-court>.

<sup>30</sup> *Sexual Abuse of a Minor or Ward*. 18 U.S. Code § 2243 (a)(1).

<sup>31</sup> *Definitions for Chapter*. 18 U.S. Code § 2256. (1).

<sup>32</sup> Ibid.

<sup>33</sup> Supra 30 (a)(2).

<sup>34</sup> Supra 30. (c)(2).

this demonstrates that the federal law condones marriage between minors and adults, and promotes the use of marriage as a method by which to avoid persecution for a crime that could otherwise amount up to fifteen years imprisonment<sup>35</sup>. Through the codification of minors in the same law determining consent in 2017 during the supreme court case *Esquivel- Quintana v. Sessions*<sup>36</sup>, the federal government of the USA has overruled the consent laws of states which have set the age to be higher than sixteen<sup>37</sup>.

On the state level, an individual is a minor until they have obtained the right to vote at the age of eighteen. Before this age, these individuals are considered to not have the legal ability to enter contracts without parental consent. In order to circumvent these laws to obtain full legal capacity, a minor would need to go to court to gain emancipation through the termination of a guardian's parental rights<sup>38</sup>. This can be proven by a minors proof of financial self-sufficiency, the best interest of the child, in addition to state stipulated judicial scrutiny as viewed on a case by case basis<sup>39</sup>. In some states such as Virginia, by getting married as a minor is considered to be an emancipated minor, and therefore legally an adult<sup>40</sup>.

In regards to sexual consent laws, those which state that the age of consent is at 17 or 18, are no longer applicable, due to federal law superseding state laws. However those with a lower age of consent, there are statutory rape clauses which prevent those who are under the age of consent from having sexual intercourse with individuals who are a certain amount of years older than them as defined by state law<sup>41</sup>. Since the federal legislation passed in 2017, this age gap has been defined as at least four years older than the minor<sup>42</sup>. Statutory rape is a strict liability crime in which an individual can not claim that they believed the minor to be of age, regardless of the previous knowledge they remain liable for the crime committed<sup>43</sup>. This rule of law was upheld in the case of *Garnet v. State*, in which a twenty-year-old man impregnated a thirteen-year-old

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<sup>35</sup> Supra 30. (b)(2).

<sup>36</sup> *Esquivel- Quintana v. Sessions*. 137 S. Ct. 1562. (2017).

<sup>37</sup> Marsh, James R. "Supreme Court Unanimously Overrules Statutory Rape laws in 20 States." *Huffington Post*. May 31, 2017. Accessed April 16, 2018. Web.  
[https://www.huffingtonpost.com/entry/supreme-court-unanimously-overrules-statutory-rape\\_us\\_592edaede4b017b267edff12](https://www.huffingtonpost.com/entry/supreme-court-unanimously-overrules-statutory-rape_us_592edaede4b017b267edff12).

<sup>38</sup> "Emancipation of Minors". *LII / Legal Information Institute*. Accessed April 16, 2018. Web.  
[https://www.law.cornell.edu/wex/emancipation\\_of\\_minors](https://www.law.cornell.edu/wex/emancipation_of_minors).

<sup>39</sup> Sund, Lars-Goran and Marie Vackermo. "The Interest Theory, Children's Rights and Social Authorities", *International Journal of Children's Rights*. Vol. 23. 2015. pp.752-768. p.757.

<sup>40</sup> Supra 12.

<sup>41</sup> Cartwright, Hannah. "Legal Age of Consent for Marriage and Sex for the 50 United States." *Global Justice Initiative*. August 21, 2011.

<sup>42</sup> Supra 33.

<sup>43</sup> Ormerod, David and Karl Laird. "Crimes of Strict Liability." *Oxford Law Trove*. May 2, 2015. Accessed April 16, 2018. Web.  
<http://www.oxfordlawtrove.com/view/10.1093/he/9780198702313.001.0001/he-9780198702313-chapter-7>.

girl. Despite the defendant's belief that the girl was of age, due to the nature of statutory rape being that of a strict liability case the defendant was sentenced to time in prison<sup>44</sup>.

Within a few states, including but not limited to Alabama, Arizona, West Virginia<sup>45</sup>, there are statutory laws called 'Romeo and Juliet Laws', in which minors under the age of consent are allowed to have consensual sex without the possibility of their partner being charged with statutory rape<sup>46</sup>. However, these laws fall within the territory of the federal legislation determining that consensual sex between a minor and another individual is legal as long as one party is at least 12 years of age and the other is no more than four years older. Therefore even when a state does not have an age gap provision within their age of consent laws, the federal law has provided one for them. As such the most extreme legal case of consensual sex between two minors would be a 12-year-old and a 16-year-old, or in the case where one is already a legal adult as stipulated by the legislation, an 18-year-old and a 14-year-old.

However when a minor is married, it does not matter if sexual relations would lead to statutory rape charges outside of the marriage, this confluence of law has created a grey area. Should a state attempt to press charges against an adult for having sexual relations with someone who is their spouse due to the difference of age, the case is typically not upheld in court as it was the court which initially allowed for them to marry<sup>47</sup>. In addition to the limited ability for state authorities to persecute adult individuals within these situations, the federal legislation which supersedes state law states, "that the persons engaging in the sexual act were at that time married to each other<sup>48</sup>" as a plausible defense for the crime in question. Therefore due to this exception, it is unlikely that an individual would go to jail despite it being a strict liability crime under circumstances in which the institution of marriage is not involved.

### 1.3 Effects of USA Law

As the previous section has shown, the legal definitions of 'marriage' and 'minor' in relation to child marriage are pursuant with parental rights in regards to granting the minor consent to go forward with a marital union. This section will look at the impact of parental rights and the rights of minors upon the continuation of child marriage within the domestic legislation of the USA. It will be found that the advocacy of parental rights over that of minors can negatively impact minors who are encouraged by their family to enter the institution of marriage under the age of majority.

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<sup>44</sup> *Garnett v. State*, 332 Md. 571, 632 A.2d 797, 1993 Md. 162.

<sup>45</sup> Bierie, David M, and Kristen M. Budd. "Romeo, Juliet and Statutory Rape." *Sexual Abuse: A Journal of Research and Treatment*. July 2016. pp, 1-26. p. 4-5.

<sup>46</sup> "Romeo and Juliet Law Law and Legal Definition." *US Legal*. Accessed April 16, 2018. Web. <https://definitions.uslegal.com/r/romeo-and-juliet-law/>.

<sup>47</sup> Bushey, Claire. "Age of Consent Muddles Law on Marriage vs. Rape." *Women's E-News*. June 7, 2007. Accessed April 16, 2018. Web. <https://womensenews.org/2007/06/age-consent-muddles-law-marriage-vs-rape/>.

<sup>48</sup> *Supra* 15

### 1.3.1 Definition of Parental Rights

The definition set forward by the federal legislation and state laws presuppose that the legal guardians of minors are acting in the best interest of the child. According to the Supreme Court of the USA in *Vernonia School District 47J v. Acton*, upheld the decision that

“un-emancipated minors lack some of the most fundamental rights of self determination-including even the right of liberty.”<sup>49</sup>

This judgment, therefore, condones the ability for those with parental rights over a minor to determine whether or not they are allowed to get married due to the fact that as a minor of the state the minor in question is considered unable to make a decision which is in their own best interest.

The Supreme Court went a step further in *Wisconsin v. Yoder*, in which the court stated that the religion of a child’s family is held in higher esteem than allowing them an education<sup>50</sup>. As such if a child came forward presenting that they were being encouraged to get married, an action which increases the likelihood that they will drop out of school due to the domestic duties of being a spouse, a court is likely to uphold the fundamental right for parents or legal guardians “to guide the religious future and education of their children”<sup>51</sup>. Therefore parents are given the right to direct the religious ideology imparted to their children which can emphasize the importance of marriage and the duties associated with the institution over the educational aims of a child.

While it can be argued that those who hold the parental rights over children are granted the ability to raise minors as they find to be in accordance with their economic, social and cultural beliefs<sup>52</sup>, these traditions can be harmful to children in the long run<sup>53</sup>. These laws unfavorably target female minors who have become pregnant or who’s parents support marriage at a young age without the consent of the minor. Proposed amendments to the constitution have been put forward in the House of Representatives, to preserve parental rights as a constitutional right, the resolutions state,

“no treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.”<sup>54</sup>

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<sup>49</sup> *Vernonia School District 47J v. Acton*, 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995).

<sup>50</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

<sup>51</sup> Klicka, Christopher J. “Decisions of the United States Supreme Court Upholding Parental Rights as ‘Fundamental’.” *Home School Legal Defense Association*. October 27, 2003. Accessed April 16, 2018. Web. <https://hsllda.org/content/docs/nche/000000/00000075.asp>.

<sup>52</sup> Levesque, Roger J.R. “Chapter 2: Families, Child Welfare, and the Constituion.” *Child Maltreatment and the Law*. 2008. pp.17-32. p. 21.

<sup>53</sup> Arce, Matias Cordero. “Maturing Children's Rights Theory.” *International Journal of Child. Rights*. Vol. 23. 2015. pp.283-331. p. 305.

<sup>54</sup> H.J.Res. 97 (110th): Proposing an amendment to the Constitution of the United States relating to parental rights.



If this proposal was to pass, it would prevent the ratification of the CRC due to the perceived infringements upon the parental right to shape the beliefs of their child<sup>55</sup>, as such the rights of minors are held to be below that of parental rights.

### 1.3.2 The Rights of Minors

Under the fourteenth amendment of the Constitution, all minors within the USA possess the same constitutional rights as adults as stated in Section 1,

“All persons born or naturalized in the United States, and subject to the Jurisdiction therefore...no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..<sup>56</sup>”

This right is upheld in the Supreme Court case, *Tinker vs. Des Moines* stating that a minor retain their constitutional rights so long as they are not breaking the law or disturbing the peace<sup>57</sup>. As such a minor is party to all of these rights as granted under the Constitution, including the right to life liberty and pursuit of happiness. However these rights are restricted to prevent them from obtaining the right to vote, own property, enter contracts without the permission or assistance of those holding parental rights or being an emancipated minor<sup>58</sup>.

Within the state marriage laws, there is little to no consideration of what the minor wishes regarding the marriage<sup>59</sup>. As such if the parents and the judiciary grant their consent regarding the marriage of a minor it would be difficult for them to “say no” due to their upbringing exemplifying the religious importance of marriage<sup>60</sup>. Non-governmental organizations (NGOs) such as Girls Not Brides and Unchained at Last, have attempted to pass state legislation which would place an age floor of 18 within various states. These groups have run into roadblocks in the form of state representatives who have

“argued that it was important to preserve the option for legal teen marriage in a few key scenarios, such as when a teenager is pregnant and wants to marry the father of her child, or when a teenager is serving in the armed forces and wishes to marry before deployment... since 17-year-olds can join the military, ‘there is no way our legislature is going to tell [them] they’re old enough to risk their lives for our country but they’re too young to get married.’<sup>61</sup>”

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<sup>55</sup> Supra 6. p. 165.

<sup>56</sup> U.S. Const. Amend., XIV § 1.

<sup>57</sup> *Tinker vs. Des Moines*, 393 US 503 (1969).

<sup>58</sup> “What are the Legal Rights of Children?” *FindLaw*. Accessed April 16, 2018. Web. <https://family.findlaw.com/emancipation-of-minors/what-are-the-legal-rights-of-children.html>.

<sup>59</sup> “Children as Believers: Minors' Free Exercise Rights and the Psychology of Religious Development.” *Harvard Law Review* 115(8), 2002. pp. 2205-2227. p. 2207.

<sup>60</sup> Supra 53. p. 300.

<sup>61</sup> Alter, Charlotte. “Why It’s Still Legal of Underage Girls to Marry in the U.S.” *Time*. June 1, 2017. Accessed April 16, 2018. Web. <http://time.com/4800808/why-its-still-legal-for-underage-girls-to-marry-in-the-u-s/>.

## 1.4 US Foreign Policy vs. Domestic

In March 2016, the United States State Department (USSD) released a Global Strategy to Empower Adolescent Girls, it is stated that the perpetuation of the cultural practice of marrying individuals before the age of 18 constitutes as human rights abuses<sup>62</sup>. The document continues to discuss the devastating effects of child marriage upon a country, as well as to the individual who is subject to the institution. This is exemplified by the butterfly effect of child marriage in relation to a nation's gross domestic product (GDP), due to a minor married under the age of majority, is 50% more likely to remove herself from educational opportunities due to familial responsibilities<sup>63</sup>, therefore leading to her limited ability to enter the work force, thus leading to larger economic consequences on the nation as a whole as the inclusion of women in the workforce increases the GDP<sup>64</sup>. As such, the foreign policy of the USSD supports the creation of national legislation within foreign states which create minimum rights for female minors, such as those found in the CRC, to benefit both the individual and the nation<sup>65</sup>.

The USSD outlines the commitment of the USA to end the practice abroad through incentive programs created to delay and prevent children from being married through financial aid to the families and an increase in the educational opportunities for girls. This staunch conviction is directly at odds with domestic legislation currently enforced within the USA, thus creating tension between themselves and the international community<sup>66</sup> as the USA claims that this is a harmful cultural practice yet continues to perpetuate the practice within its own borders due to religious and cultural contexts within the USA.

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<sup>62</sup> United States Department of the State. *United States Global Strategy to Empower Adolescent Girls*. March 2016.

<sup>63</sup> Supra 24. p. 4.

<sup>64</sup> Vogelstein, Rachel. "Ending Child Marriage: How Elevating the Status of Girls advances U.S. Foreign Policy Objectives." *Council on Foreign Relations*. May 2013. pp.1-39. p. 17.

<sup>65</sup> Supra 15. p. 524.

<sup>66</sup> Supra 6. p. 171.

## 2. Cultural Right to Marriage

In part 1 of this thesis the legal definitions relating to child marriage as found within international law and USA legislation. It has been determined that the child marriage is a practice which is at odds with human rights standards and is allowed under USA legislation so long as there is consent given on behalf of a minor by an individual with social authority, ie. Judiciary approval, or has guardianship over said minor. It has been established that the legislation of the USA is reliant upon legal traditions as established by the reliance of those with parental authority acting in accordance with what is believed to be in the best interest of the minor. In part 2 the cultural rights of the conservative Christian population of the USA will be explored. Cultural rights are protected under international law so long as they do not perpetuate harmful cultural practices resulting in human rights abuses. Within this portion of the thesis, the impact of Christianity upon legislation of the USA will be discussed while clearly defining the main subject of this paper as the conservative Christian community. Following will be an analysis of the socio-legal implications of this legislative power upon the institution of child marriage and the sociological impact of the tradition upon the minors who are subjected to its continuation.

### 2.1 Christianity within the USA

The American vernacular is conducted in a way to emulate the omnipresence of God in the lives of its citizens. Before the beginning of the school day or sports games, individuals are excited to recite the pledge of allegiance, which states “One Nation Under God.”<sup>67</sup> This rhetoric can be found codified within the American legal system as in 1956 Congress passed legislation which made “In God We Trust” the national motto<sup>68</sup>. As such, it would be difficult to argue that the USA has promoted legal grounds founded upon a secular foundation.

The prevalence of Christian factions fleeing from prosecution in Europe created a nation which roots are settled deep within the protection of Christian morals as defined by the free practice of their faith<sup>69</sup>. The convictions set forward by conservative Christian communities have given rise to movements promoting shifts in legal perspectives throughout American history as determined by their social prominence. Examples of this can be found in the now repealed 18th Amendment of the Constitution outlawing alcohol due to pressure from temperance movements spearheaded

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<sup>67</sup> Dailey, Anne C. “Children’s Constitutional Rights” *Minnesota Law Review*. Vol. 95. 2011. pp, 2099-2179. p. 2120.

<sup>68</sup> *National motto*, 36 U.S. Code § 302.

<sup>69</sup> Gjelten, Tom. “To Understand How religion Shapes America, Look to it’s Early Days.” *NPR*. June 28, 2017. Accessed April 18, 2018. Web. <https://www.npr.org/2017/06/28/534765046/smithsonian-exhibit-explores-religious-diversitys-role-in-u-s-history>.

by Evangelical Protestants<sup>70</sup>, as well within the abolition movement leading to the emancipation of slaves in 19th century America<sup>71</sup>, in addition to DOMA.

### 2.1.1 Legal importance of Christianity

The presence of Christianity has become embedded within the US legal system as while the church and state are supposed to remain separate, the common perception is that there can not be one without the other, as the government will lean upon the church as it's moral compass. As noted in the previous section, the Constitution is the superior law in the USA providing the legal framework by which all other laws are subjected too. Due to the social construct of the 18th century promoting advances under Enlightenment, this document emulates the importance that government should be distinct from the church within the First Amendment<sup>72</sup><sup>73</sup>. Despite this distinction, the document was created by men prescribed in national history as devout Christians thus the prevalence of religion in regards to state legislative morals has lead society to question the manner in which the document should be interpreted. There are two prominent methods of thought by which this is achieved, Original Intent and Living Document. Under Original Intent, Supreme Court judges attempt to interpret the provisions of the Constitution as they believe the Founding Fathers intended it to be read<sup>74</sup>. Conversely, under Living Document interpretation, court justices find that the vague nature of the syntax of the document provides for the guiding principles to grow alongside society's legal necessity<sup>75</sup>.

These interpretation frameworks have shaped corresponding court frameworks as judges debate under which is best suited for legislation in the USA. For those who follow Christian ideologies, the use of Original Intent interpretation could be considered the correct method as it promotes legislation to follow ideals upheld by the Christian Founding Fathers<sup>76</sup>. Original Intent presumes that the fundamental ideals upheld by the founders are reflected in the Constitution due to their conviction to uphold Christian morals through stating that these men believed that man was created in God's image with morals ordained by him<sup>77</sup>. As such, legal questions of morality presented before the court should be examined from this point of view.

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<sup>70</sup> "Prohibition." *History.com*. Accessed April 20, 2018. Web.  
<https://www.history.com/topics/prohibition>.

<sup>71</sup> "Abolitionist Movement." *History.com*. Accessed April 20, 2018. Web.  
<https://www.history.com/topics/black-history/abolitionist-movement>.

<sup>72</sup> U.S. Const., Amend., I.

<sup>73</sup> Hall, Mark David. "Did America Have a Christian Founding?" *The Heritage Lectures*, no. 1186. 2011. pp.1-15. p. 10.

<sup>74</sup> Perry, Barbara A. "Original Intent or Evolving Constitution? Two Competing Views on Interpretation." *Insights on Law and Society*. Vol. 5(1). Fall 2004. pp. 4-6, 30. p.5.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Supra 73. p.9.

The USA is a country which upholds its population's right to the freedom of religion<sup>78</sup>, however political demographics are skewed by the overrepresentation of politicians who identify as Christians<sup>79</sup>. Nearly all US Presidents have been Christians, with the exception of Abraham Lincoln and Thomas Jefferson who were associated with Christian ideology but were not formally a part of a particular church<sup>80</sup>. In addition, the current 115th Congress consists of only thirty-nine non-christian representatives<sup>81</sup> out of a total of five hundred thirty-five members. A possible reason behind this trend is due to Christian voters comprising a majority of the electorate with 70% identifying as Christian<sup>82</sup>, those who are unaffiliated with a specific faith have typically grown up in households which uphold Christian traditions thus leading them to believe that those who are affiliated with this background are more likely to emulate the beliefs they themselves hold. This is especially represented within those associated with the Republican Party who place a higher importance upon religion within their lives than Democrats<sup>83</sup>, therefore leading this portion of the electorate to vote for those which emulate Christian values.

Within the USA, 11% of the population (about 35.827 million) identify as conservative Christians<sup>84</sup>, this is determined not only by themselves but within a religious framework which takes into account the high frequency of church attendance, self-identification as biblical literalists in addition to upholding an image of an active angry God<sup>85</sup>. Those within this community are specified as those who believe that the USA government should implement legislation within theological ideals found within the Bible<sup>86</sup>, thus supporting legislation which would reevaluate the concepts of marriage, family, and sexuality within a biblical framework.

This demographic has impacts which laws are implemented into US legislation, both on a state and federal level. As voters wish for their views to be reflected by the politicians they elect, it is

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<sup>78</sup> Supra 72.

<sup>79</sup> "Religious Landscape Study." *Pew Research Center*. Accessed April 20, 2018. Web.  
<http://www.pewforum.org/religious-landscape-study/>.

<sup>80</sup> Masci, David. "Almost All U.S. Presidents, Including Trump, Have been Christians." *Pew Research Center*. January 20, 2017. Accessed April 20, 2018. Web.  
<http://www.pewresearch.org/fact-tank/2017/01/20/almost-all-presidents-have-been-christians/>.

<sup>81</sup> Marcos, Cristina. "115th Congress Will be Most Racially Diverse in History." *The Hill*. November 17, 2016. Accessed April 20, 2018. Web.  
<http://thehill.com/homenews/house/306480-115th-congress-will-be-most-racially-diverse-in-history>.

<sup>82</sup> Supra 79.

<sup>83</sup> Lipka, Michael. "A Closer Look at Religion in the Super Tuesday States." *Pew Research Center*. February 25, 2016. Accessed April 20, 2018. Web.  
<http://www.pewresearch.org/fact-tank/2016/02/25/a-closer-look-at-religion-in-the-super-tuesday-states/>.

<sup>84</sup> "69% Say Liberals too Secular, 49% Say Conservatives Too Assertive: Many Americans Uneasy with Mix of Religion and Politics." *The Pew Research Center*. August 24, 2006. pp. 1-38. p. 3.

<sup>85</sup> Whitehead, Andrew L. "Sacred Rites and Civil Rights: Religion's Effect on Attitudes toward Same-Sex Unions and the Perceived cause of Homosexuality." *Social Science Quarterly*. Vol. 91 (1) March 2010. p.p 63-79. p. 65.

<sup>86</sup> Erzen, Tanya. "Testimonial Politics: The Christian Right's Faith-Based Approach to Marriage and Imprisonment." *American Quarterly*, Vol. 59(3). September 2007, p.p 991-1015. p. 992.

equally important for those individuals in question to abide by the wishes of their electorate. Should they vote on legislation in a manner which their constituents do not agree with, it is likely that they will not be re-elected, thus being replaced with someone who will exemplify the ideals the electorate feel strongly about<sup>87</sup>. Due to this process, it is common for churches to shape the political focus of its attendants through sermons denoting the importance of caring for the impoverished, death penalty, homosexuality, and sexual liberation<sup>88</sup>. This influence reaches out beyond the church's doors to encapsulate the daily ideals individuals should strive to emulate thus leading in turn to the creation of legislation to codify these concepts. This religious activism goes so far as to advocate for national and state legislation from a grassroots perspective which places limitations upon who is able to obtain the right to marry, including those who are under the age of majority in heterosexual relationships<sup>89</sup>.

## 2.2 Socio-legal impact of Conservative Christianity

The previous section noted the historical importance of Christianity upon the formation of the USA's legislation, determining that due to the prominence of those who identify as Christian within the demographics of Congress. As such this section will analyze the concept of marriage as a cultural necessity for those who prescribe to conservative Christian ideologies within the legal construct. It will be found that child marriage is believed to be an extension of marriage rights, as, despite the age of those party to the union, the sentiment and intentions of the religious rite remain constant.

### 2.2.1 Marriage

Historically, marriage is the publicly recognized union between a man and a woman, in order to unite families for the purpose of diplomatic and economic benefits, in addition to the maintenance of bloodlines through the recognition of paternity<sup>90</sup>. With the formal establishment of the Christian faith these foundational ideals were paired with the salvation of one's soul; as such by getting married, it was ensured that all sexual relations resulting in the production of children were ordained by the church as they would be in wedlock<sup>91</sup>. As such, the church used

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<sup>87</sup> Scheitle, Christopher P. And Bryanna B. Hahn. "From the Pews to Policy: Specifying Evangelical Protestantism's Influence on States' Sexual Orientation Policies." *Social Forces*. Vol. 89(3) March 2011. pp. 913-933. p. 922.

<sup>88</sup> Supra 86. p. 1010.

<sup>89</sup> Ibid.

<sup>90</sup> Everitt, Lauren. "Ten Key Moments in the history of Marriage." *BBC*. March 14, 2018. Accessed April 20, 2018. Web.  
<http://www.bbc.com/news/magazine-17351133>.

<sup>91</sup> Stritof, Sheri. "How Long has the Institution of Marriage Existed For." *The Spruce*. February 18, 2018. Accessed April 20, 2018. Web.  
<https://www.thespruce.com/history-of-marriage-2300616>.

the concept of sin regarding not only the soul of the mother but that of the child to promote the importance of celibacy and marriage<sup>92</sup>.

The regulation of marriage by the state or the church has continued into the present day, leading to the protection of the institution developing into a citizen's fundamental right within the USA<sup>93</sup>. In the present day, 32% of the American population view marriage as the public declaration of love between a man and a woman before friends, family, and God<sup>94</sup>. Marriage is seen as the fundamental foundation of a family without which, society will be weakened as a whole<sup>95</sup>. This traditional view on marriage, indicates individuals do not want the state government to become involved in their private lives<sup>96</sup>, as marriage is an institution which supersedes the national government as it is considered a holy sacrament that the government has no right to redefine or limit within the confines of their own definition<sup>97</sup>. As such, the institution of child marriage is subjected to equal protection and treatment under the law as a marriage between two consenting adults.

### 2.2.2 Child Marriage

It is important to note that child marriage is not limited to a single faith, around the world this practice occurs in almost every religion<sup>98</sup>, however, the purpose of this paper the focus is to upon conservative Christian communities in the USA. As stated above, marriage is viewed by the conservative Christian population as the socially approved method by which individuals should have children, the sexuality of these individuals is repressed until they are married in order to maintain fundamental beliefs<sup>99</sup>. As such, there is an emphasis upon the importance of virginity, in particular, that of girls, this is tied to the honor of the individual themselves and their family, as any sexual relations outside of marriage can reflect upon the poor upbringing of the minor<sup>100</sup>. When a minor reaches the age of puberty, the chances of them becoming sexually active

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<sup>92</sup> Hamilton, Vivian E, "The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage." *Boston University Law Review*. Vol. 92. 2012. pp. 1818-1862. p. 1842.

<sup>93</sup> Ibid. p. 1861.

<sup>94</sup> "Changing Attitudes on Gay Marriage." *Pew Research Center*. June 26, 2017. Accessed April 20, 2018. Web. <http://www.pewforum.org/fact-sheet/changing-attitudes-on-gay-marriage/>.

<sup>95</sup> "Marriage- Why it Matters." *Focus on the Family*. Accessed April 20, 2018. Web. <https://www.heritage.org/marriage-and-family/report/marriage-what-it-why-it-matters-and-the-consequences-redefining-it>.

<sup>96</sup> Supra 67. p. 2105.

<sup>97</sup> Supra 86. p.1001.

<sup>98</sup> Vogerlstein, Rachel. "Child Marriage and Religion." *Council on Foreign Relations*. January 2, 2014. Accessed April 18, 2018. Web. <https://www.cfr.org/blog/child-marriage-and-religion-0>.

<sup>99</sup> Supra 52. p. 24.

<sup>100</sup> Supra 39. p. 761.

becomes higher, with a 64% chance that female individuals will have sexual intercourse by the age of 18<sup>101</sup>. Thus, child marriage is an approved method by which the souls of these individuals are protected in addition to that of any child resulting from these sexual unions as they are ensured not to be born out of wedlock.

Within the USA, this defense of sexual intercourse being reserved for marriage has been taken to the extreme within an offshoot of the Mormon faith with a group known as the Fundamentalist Latter-day Saints Church (FLDS)<sup>102</sup>. Historically, Mormons believe in polygamy, by which men are expected to marry multiple women for the purpose of having as many children as possible, a belief which stems from the belief that souls are saved from pre-existence by being born, as such it is the Mormons duty to save as many as possible<sup>103</sup>. In 1896 the USA federal government mandated that this practice be stopped with state legislation making bigamy illegal as a condition for Utah to gain statehood, thus causing the eventual fracture of the faith, with offshoots connoting to practice polygamy, such as the FLDS<sup>104</sup>.

Within the FLDS, this belief is taken to the extreme as girls are told that marriage at a young age is what God wants<sup>105</sup>, thus ensuring that upon reaching the age of puberty, the girls have been socially conditioned to want or are pressured into entering holy matrimony with a man chosen by the leader of the community<sup>106</sup>. This ensures not only the salvation of souls due to an extended period of time by which a girl is able to give birth but also the institutionalization of female subordination to the church and the men who preserve this conservative tradition<sup>107</sup>.

As such when claims arise regarding the illegal nature of polygamy under both federal and state law, practitioners argue that governmental interference is an infringement upon their religious right to practice their faith<sup>108</sup>. These individuals assert that as the freedom to one's religion is

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<sup>101</sup> Fortenberry, J. Dennis. "Puberty and Adolescent Sexuality." *National Institute of Health*. Vol. 64(2). July 2013. pp. 1-18. p. 9.

<sup>102</sup> "Crimes Associated with Polygamy: The Need for a Coordinated State and Federal Response." Committee on the Judiciary of the United State Senate 110th Congress, second session. July 24, 2008. J-110-110.

<sup>103</sup> Leduff, Charlie. "A Holdout Polygamist, 88, Defies the Mormons." *The New York Times*. February 23, 2002. Accessed April 20, 2018. Web.  
<https://www.nytimes.com/2002/02/23/us/a-holdout-polygamist-88-defies-the-mormons.html>.

<sup>104</sup> Janofsky, Michael. "Young brides stir new outcry on Utah Polygamy." *The New York Times*. February 28, 2003. Accessed April 20, 2018. Web.  
<https://www.nytimes.com/2003/02/28/us/young-brides-stir-new-outcry-on-utah-polygamy.html>.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Rose, Susan. "Going too Far? Sex, Sin and Social Policy." *Social Forces*. Vol 84(2) December 2005.p.p 1207-1232. p. 1214.

<sup>108</sup> Pilkington, Ed. "Fundamentalist Sect Leader jailed for life for sex with Child Brides." *The Guardian*. August 9, 2011. Accessed April 20, 2018. Web.  
<https://www.theguardian.com/world/2011/aug/09/warren-jeffs-jailed-life-sentence>.



granted by the first amendment of the US Constitution<sup>109</sup>, the government should not have the power to impede upon practices held to be important to their religion. This argument transpires into other divisions of conservative Christianity which support their practitioners right for minors to be married as marriage is a holy sacrament by which any interference by the government impeding upon this right would be unconstitutional, a sentiment which has been upheld by the Supreme Court's rulings regarding the legal parameters of marriage.

## **2.3 Supreme Court-Marriage Rights Cases**

The constitutional right to marriage has been brought into question multiple times throughout the legal history of the USA. These cases are still binding precedent, and have established marriage as a citizen's fundamental right without fully addressing the institution of child marriage. The cases to be discussed in this section will be analyzed in regards to their stipulation that marriage is a cultural right, in addition to the impact of these rulings upon the right for minors to enter matrimony. While not all the cases are specific to the fundamental right of marriage, the court made the decisions based on opinions which are intrinsically linked to this right.

### **2.3.1 *Maynard vs. Hill* (1888)**

This case surrounded the question of whether a wife was subject to be granted a portion of land upon the issuance of a divorce, thus leading the Supreme Court to address the legal nature of marriage. The court held that marriage is more than a contract, as it creates the most important relationship in life which two individuals can be apart of as it is the foundation of family and society<sup>110</sup>.

Based upon this ruling, marriage is a right to be protected by state authorities. As such this ruling protects the institution from unjust interference. As pertaining to child marriage, this case shows that it is in the public interest to allow marriage between those who are going to have children as it is the primary foundation for a family. It upholds that the importance of marriage above all other institutions, it is not only a contract but a legal institution with duties and rights. As such the dissolution of marriages due to one party being a minor would be against the rights of those individuals as it would amount to the removal familial foundations created between those individuals as marriage constitutes rights and responsibilities between the parties regardless of the institution being that of child marriage.

### **2.3.2 *Griswold v. Connecticut* (1965)**

In this case, the defendant was giving medical advice regarding how methods by which to prevent conception to married women, a concept which was illegal in the state of Connecticut. This law was found to be unconstitutional by the court as it infringes upon the right of marital

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<sup>109</sup> Supra 72.

<sup>110</sup> *Maynard v. Hill*, 125 U.S. 190, 205, 211 (1888)

privacy<sup>111</sup>. This right to privacy is seen as a fundamental personal right as granted by the 14th amendment of the constitution<sup>112</sup> and upheld in a previous Supreme Court case, *Prince v. Massachusetts*, stating that the decision of the court must “respect the private realm of family life which the state cannot enter.”<sup>113</sup> The court holds marriage as a reverent institution which individuals do not enter lightly, stating “it is an association for as noble a purpose as any involved in our prior decisions.”<sup>114</sup>

As such the marital relationship between individuals is held as being outside state control, thus upholding the previously stated USA federal law by which a minor is allowed to have sexual relations with an individual more than four years their elder so long as they are conducted within the confines of marriage<sup>115</sup>. Given this precedent, it would be unconstitutional for the state to create legislation making it illegal for these relations to occur within marriage as it would impede upon this privacy of the union. As such it also promotes the ability for individuals to use child marriage as a method by which to avoid statutory rape allegations as once a couple is married, they are entitled to the right to privacy regarding the relations which occur within that union.

### **2.3.3 *Carey vs. Population Services International* (1977)**

The right of minors to be permitted privacy regarding their intimate relations and the ability for those who are under the age of majority to purchase contraceptives. The court held that preventing the sale was unconstitutional as it infringes upon the right to privacy regarding the sexual relations of these individuals, stating that

“the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education.”<sup>116</sup>

As such minors are granted the same constitutional right of privacy as adults regarding their intimate relations thus the decisions made within that capacity cannot be subject to governmental scrutiny.

This ruling is at odds with statutory rape laws, this court decision allows for all consensual sexual relationships to be conducted at the discretion of those who are party to them. As such, it can be said that the personal decision of a child to be married as informed by the education they have received within their familial structure is constitutional. For an example, if a minor has been raised in an environment which condones the religious importance of marriage at an early age, the law would need to support this union as it is protected not only by the first amendment

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<sup>111</sup> *Griswold v. Connecticut*, 381 US 479 (1965)

<sup>112</sup> *Supra* 56

<sup>113</sup> *Prince v. Massachusetts*, 321 U. S. 158, at 166

<sup>114</sup> *Supra* 111.

<sup>115</sup> *Supra* 33.

<sup>116</sup> *Carey v. Population Services International*, 431 U.S. 678, 684-85 (1977).

establishing the protection of religious freedom but also due to this case stating that minors have a right to privacy and capacity to make their own decisions regarding marriage. Thus child marriage has been found to be within the scope of both a religious practice leading to a right to privacy within that union, therefore upholding the institution as a cultural tradition and protected right.

## 2.4 Cultural Significance of Marriage

As shown in the above-mentioned cases, the USA judiciary views marriage as a right intrinsically linked to a fulfilled life and functional society, in accordance with being a religious necessity. Marriage is considered to be a private matter which the state cannot impede upon, as doing so infringes upon the religious rights of these individuals, a right which is also recognized internationally as a cultural right through the UDHR and the international conventions, CEDAW and CCMMAMRM. These rights are respected by the international community as they are recognized as human rights, for example the right to participate in cultural life and share in and benefit from one's beliefs<sup>117</sup>. While the UN has discussed the importance of respecting cultural rights within the International Convention on Economic, Social, and Cultural Rights, the protection of these rights can only go so far as to protect cultural traditions when they are not causing human rights violations<sup>118</sup>. Child marriage is in direct contradiction with this distinction.

Internationally, there are multiple forms of marriage which are recognized as being culturally important without breaching human rights, including the tradition of arranged marriages<sup>119</sup>. These unions are planned and agreed upon by families of the couple which in turn consent to the arrangement<sup>120</sup>. There is a thin line between coercion on behalf of parents or society for a marriage to occur and the individual's party to the union are entering with their own free will. The former is socially and mutually approved by both parties while the latter is not. Those who are urged by familial pressure to enter a marriage that they do not wish to be apart of, have the ability to request an act of annulment to be granted by a court so long as there is proof of forced consent<sup>121</sup>.

Those states which are party to the above mentioned international conventions are given the obligation to eliminate discrimination and protect children. By allowing child marriage to continue even on an informal level due to the use of "celestial marriages," in which a couple is

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<sup>117</sup> "Frequently asked questions on economic, Social and Cultural Rights." *Office of the United Nations High Commissioner for Human Rights*. Fact Sheet no. 33.

<sup>118</sup> Grover, S.C.. "Chapter 8: Communications Concerning Violations of Children's Economic, Social, or Cultural Rights Under OP3-CRC." *Children Defending their Human Rights Under the CRC Communications Procedure*. pp. 221-249. p.223.

<sup>119</sup> Jenkinson, Sue and Dave Tapp. "Forced Marriage- Culture or Crime?" *Staffordshire University, School of Law*. pp 1-17. p. 1.

<sup>120</sup> Ibid p.7.

<sup>121</sup> "What's the difference between Annulment and Divorce?" *FindLaw*. Accessed April 25, 2018. Web. <https://family.findlaw.com/divorce/how-marriage-annulments-differ-from-divorces-and-the-grounds-for.html>.

married before the eyes of god due to a religious ceremony, but not formally reported to the state, the state is neglecting its responsibility to protect these children. Marriage is an important milestone in an individuals life, so long as both parties are consenting adults who fully understand the legal obligations they are entitled to, as well as have the ability to utilize legal avenues to leave a marriage which they no longer desire<sup>122</sup>.

Those who uphold the principle that marrying at a young age is apart of their cultural rights are misconstruing the fundamental components of the UDHR, in which the human rights of individuals are held in the highest importance<sup>123</sup>. While the USA is not party to the CRC, CEDAW or the CCMMAMRM, they are party to the UDHR due to its adoption by the General Assembly of the UN, under which the application of child marriage as a religious right is against the human rights of these children who are subjected to the practice. Cultural rights are important to the preservation of traditions and the well-being of the individuals within those communities. As such these rights are to be protected, so long as they do not perpetuate negative long-term effects upon those who are subjected to them; via social pressure or lack of legal remediation for individuals.

## 2.5 Sociological Impact of Child Marriage

Child marriage allows conservative Christian communities to uphold a cultural custom held in high esteem as it prevents children from being born out of wedlock, thus ensuring that religious sentiments regarding pre-marital sex and community concession are adhered too<sup>124</sup>. This viewpoint fails to look beyond the scope of the communities cultural preservation and look into the impact that child marriage has upon minors. This section will look at the prevalence of this tradition within the USA in regard to the laws which allow for its continuation, followed by the effects of its continuation upon minors.

### 2.5.1 Prevalence of Child Marriage in the USA

Due to the lack of the USA Congress to ratify the CRC, activists from international NGO's such as GirlsNotBrides began to look into the rates of child marriage within the states. It is difficult for accurate numbers to be released as the protection of an individuals privacy is held in high regard, however, according to the US census bureau, 57,800 aged 15-17 were married in 2014<sup>125</sup>.

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<sup>122</sup> Grover, S.C.. "Chapter 1: The Convention on the Rights of the Child Communications/Complaints Procedure and the Convention General Implementation Articles" *Children Defending Their Human Rights under the CRC Communications Procedure*. pp. 3-19. p.7.

<sup>123</sup> Miller, Michelle J. "Stop Forced Child Marriage: A Comparative Global Law Analysis." *World Academy of Science, Engineering and Technology International Journal of Humanities and Social Sciences* Vol:9 (11), 2015. pp. 3908-3917. p. 3910.

<sup>124</sup> "Child Marriage Policy Brief." *Vermont Commission on Women*. September 2017.pp.1-37. p. 2.

<sup>125</sup> Kristoff, Nicholas. "11 Years old, a Mom, and Pushed to Marry Her Rapist in Florida." *The New York Times*. May 26, 2017. Accessed April 25, 2018. Web.  
<https://www.nytimes.com/2017/05/26/opinion/sunday/it-was-forced-on-me-child-marriage-in-the-us.html>.

The domestic NGO UnChained at Last found that 87% of these marriages involved female minors<sup>126</sup>. This statistics demonstrates that the laws within the USA are disproportionality utilized to entrap female minors within marriages that they may not be consenting to. This is due to regulations allowing the pregnancy of a minor to be an acceptable reasoning to allow a marriage to occur as it is felt that these unions are in the best interest of the minor in question<sup>127</sup>.

This discrimination is further noted as the state of Georgia changed state legislation allowing the marriage of a minor when one of the parties to the union is pregnant, in 2006 when a 37-year-old woman was allowed to marry a 15-year-old male minor<sup>128</sup>, thus portraying that lawmakers are more akin to force female minors into marriages than to subject male minors to an unwanted marriage as it would unfairly take away their freedom. Due to this rationalization of the issue at hand, NGOs such as those mentioned before have attempted to lobby state legislatures to change the marriage laws in a manner which would prevent those under the age of 18 from being married. In New Jersey, a bill presenting this age floor was passed by the state legislature but vetoed by the former Governor of the State, Chris Christie due to his belief that the law conflicted with religious rights<sup>129</sup>.

### 2.5.2 Recognition of the Effects of Child Marriage

The fear that raising the age of marriage would be unconstitutional due to its impact upon the religious rights of conservative Christian practitioners, ignores the problems such as the use of marriages between minors and adults who are four years older than they are to avoid persecution of statutory rape allegations, as mentioned previously, should a minor become pregnant due to sexual relations with an individual who is more than four years their elder, a crime which would constitute statutory rape, marriage negates the prosecution for such a crime<sup>130</sup>. As such these laws allow victims to be forced into a union with their assaulter on religious grounds which put the practice of cultural rights before the true best interests of the child in question.

In turn, the psychological impact of the perpetuation of these laws can be detrimental for those under the age of 18, who do not want to be married, but due to pressure from parents and society

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<sup>126</sup> Wulforst, Ellen. “‘End This Abuse’: Campaigner Spreads Message about child Marriage in the USA.” *Thomas Reuters Foundation*. November 14, 2017. Accessed April 25, 2018. Web. <https://theirworld.org/news/usa-end-child-marriage-campaign-unchained-at-last-fraidy-reiss>.

<sup>127</sup> Reiss, Freddy. “Why does the United States Still let 12 Year Old Girls get Married?” *The Washington Post*. February 10, 2017. Accessed April 25, 2018. Web. [https://www.washingtonpost.com/posteverything/wp/2017/02/10/why-does-the-united-states-still-let-12-year-old-girls-get-married/?utm\\_term=.39a6aefeb8f9](https://www.washingtonpost.com/posteverything/wp/2017/02/10/why-does-the-united-states-still-let-12-year-old-girls-get-married/?utm_term=.39a6aefeb8f9).

<sup>128</sup> Supra 47.

<sup>129</sup> Baynes, Chris. “More than 200,000 children married in US over the last 15 years.” *Independent*. July 8, 2017. Accessed April 25, 2018. Web. <https://www.independent.co.uk/news/world/americas/200000-children-married-us-15-years-child-marriage-child-brides-new-jersey-chris-christie-a7830266.html>.

<sup>130</sup> Tsui, Anjali. “Child Marriage in America By the Numbers.” *Frontline*. July 6, 2017. Web. <http://apps.frontline.org/child-marriage-by-the-numbers/>.

are forced into the union<sup>131</sup>. Additionally, these laws presume that the child adheres to the same fundamentalist conservative Christian values as those who hold parental rights over them, without taking into consideration that minors may subscribe to a different viewpoint within the faith itself<sup>132</sup>. In a study conducted by the National Institute of Health (NIH) in 2008 found that 42% of women who were raised in conservative Christian Households were married before the age of 23<sup>133</sup>. This statistic was found not to be in correlation with the number of religious services attended, but rather the common social sentiment within the familial values which are encapsulated within the society pushing for marriage to occur while the woman is young<sup>134</sup>.

In addition, if an individual is married at an early age they are more likely to give birth at an earlier age, especially if they were married due to already being pregnant. Due to the young age of these individuals, their bodies are not fully capable of carrying and giving birth to a child, thus it is 60% more likely that the minor would die as a result of the pregnancy or from the birth than a woman who is above the age of 19<sup>135</sup><sup>136</sup>. The lower the age of the expectant mother, the higher the chance that the baby of this individual will be still-born, have a low birth weight, be born prematurely or die from sudden infant death syndrome (SIDS)<sup>137</sup>.

As such when a minor gives birth, even if outside the institution of marriage, the minor is still subject to the care of their legal guardian until they reach the age of 18 or is judicially approved to become emancipated<sup>138</sup>. Marriage additionally does not free a minor from these bounds, but merely transfers the custodial relationship to their husband<sup>139</sup>. This transfer of custodial rights can have detrimental impacts upon minors as the power dynamic is unequal, thus possibly leading to the exploitation of this power; this is shown by the rate of domestic violence among females aged 16-19 being 3 times higher than the national average in the USA<sup>140</sup>. Should a

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<sup>131</sup> Supra 123. p. 3914.

<sup>132</sup> Supra 59. p. 2215.

<sup>133</sup> Uecker, Jeremy E. and Charles E. Stokes. "Early Marriage in the United States." *National Institution of Health*. 70 (4). November 2008. pp. 1-18. p.7.

<sup>134</sup> Ibid. p.3.

<sup>135</sup> Nag, Oishimaya Sen. "Child Marriage- Rationale, Historical Views, and Consequences." *The World Atlas*. April 25, 2017. Accessed April 25, 2018. Web.  
<https://www.worldatlas.com/articles/child-marriage-rationale-historical-views-and-consequences.html>.

<sup>136</sup> Malhotra, Anju. "The Causes, Consequences, and Solutions to Forced Child Marriage in the Developing World." *International Center for Research on Women*. July 15, 2010. pp. 1-12. p. 5.

<sup>137</sup> Supra 64. p. 15.

<sup>138</sup> Alanen, Julia. "Shattering the Silence Surrounding Forced and Early Marriage in the United States." *Children's Legal Rights Journal*. Vol. 32(2) Summer 2012. pp.1-37. p. 14.

<sup>139</sup> Jeltsen, Melissa. "Grown Men Are Exploiting Loopholes In State Laws to Marry Children." *Huffington Post*. August 30, 2017. Web.  
[https://www.huffingtonpost.com/entry/child-marriage-state-laws\\_us\\_59a5e70ee4b00795c2a27e19](https://www.huffingtonpost.com/entry/child-marriage-state-laws_us_59a5e70ee4b00795c2a27e19).

<sup>140</sup> Supra 24. p. 5.

minor desire to flee the marriage, a minor would not be able to enter a contract with a lawyer, file for divorce or seek refuge in a woman's shelter as those who help them can be charged with kidnapping<sup>141</sup>. The ability for these individuals to seek protection is limited as the laws which are supposed to protect them are instead preventing them from acting within their own best interests. It is paramount for the USA to find legislative solutions within both domestic and international considerations in order to cease the consequences of child marriage.

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<sup>141</sup> van der Zee, Renate. "'It put an end to my childhood': the hidden scandal of US Child Marriage." *The Guardian*. February 6, 2018. Accessed April 25, 2018. Web.  
<https://www.theguardian.com/inequality/2018/feb/06/it-put-an-end-to-my-childhood-the-hidden-scandal-of-us-child-marriage>.

### 3. Negotiating Between Domestic Legislation and International Law

Thus far the contention between the human rights perspective of child marriage, in regards to the legal definition of the various components of the practice, and the cultural practice as viewed by conservative Christian practitioners has been established. Part 1 of this thesis has demonstrated that the human rights objectives of the international community is in juxtaposition to the legislation held in the USA, thus establishing the prominence of cultural ideals in the creation of USA laws by policy makes. These cultural concepts as upheld by conservative Christian constituents was explored within part 2, finding that the maintenance of marriage as an institution outside of state control is important to those within the conservative Christian community.

Within this last part of the thesis, avenues by which the tension between human rights edicts and cultural right preservation can be resolved will be explored. Primarily it will be determined that child marriage can be remedied through the utilization of domestic remedies and application of international laws within the USA. This section will analyze domestic and international reconciliation tactics which the USA can utilize in order to combat the legal condonation of this harmful cultural practice. This section will find that in order to combat child marriage it is necessary for the USA to initiate changes which incorporate both domestic legislation and international regulations in tandem to facilitate the cessation of this human rights abuse.

#### 3.1 Legal possibilities for the USA

Child marriage is a violation of human rights in addition to a lack of legal protection for minors who find themselves to be a part of these institutions. In order for the USA to remedy these issues, there is a vital need for legislative changes to be implemented in addition to societal influences imparted into the community to inform citizens regarding the negative aspects of this tradition. In this section, three domestic remedies will be presented, which can be plausibly applicable to the prevention of child marriage, in conjunction with the strategic harmonization of legislative social practices between the federal and state governments.

##### 3.1.1 Complete Ban of Child Marriage

A complete ban would constitute legislation which places an age floor upon the institution of marriage. As such, individuals would not be allowed to enter a marital union if they are below the age of majority without any exceptions to the law, including but not limited to emancipated minors, parental consent, judges approval or pregnancy, thus taking the institution of child marriage away from the broad social interest, focusing on the protection of minors<sup>142</sup>. By passing this law on a national level, individuals who are below this age would be unable to forum shop for a location in which to be legally married across state or county lines within the territory of the

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<sup>142</sup> Levesque, Roger J.R. "Chapter 8: Rethinking Laws Regulating Child Protection." *Child Maltreatment and the Law*. pp. 169-192. p. 169.



USA. The structure would be a replication of the failed legislation which was voted on in the state congress of New Jersey mentioned above, which has been endorsed by the NGO, UnChained at Last stating the explicit bar against any person under the age of 18 from marrying<sup>143</sup>.

By taking this legal avenue, advocates for the complete abolition of child marriage within the USA would be appeased, as a bill of this nature would bring about fundamental changes regarding the protection of female minors. Additionally, the USA would be complying with their duties regarding the Article 16.2 of the UDHR states that marriage may only be entered into with the “free and full consent of the intending spouses”<sup>144</sup>. Legislation which permits only those who have attained the age of majority to marry guarantees that these individuals possess the ability to grant their consent to entering this institution without the reliance of a legal guardian or judge deciding whether or not the marriage is in their best interest as they would be presumed capable to make that judgement on their own.

A complete ban on child marriage would constitute equal protection of male and female children under the law as current laws grant exceptions to the age of marriage in relation to the normative expectation that female minors who are pregnant should be allowed to enter a marriage, in addition to the fear of premarital sexual activity leading to a pregnancy, thus those who are subjected to the institution of child marriage are disproportionality female<sup>145</sup>. Through the establishment of legislation in which there are no exceptions to the age of marriage would prevent the institutionalization of female minors being married when they come to the age of puberty or begin to engage in sexual relations. As such there would be an equalization between the genders of children, as one is not disproportionately affected.

Additionally, the institution of marriage would no longer be able to be used as a cover-up for statutory rape. As it is codified by federal legislation, rape of this nature is only in regards to sexual relations between a minor no older than 16 and an individual four years their elder so long as those individuals are not married<sup>146</sup>. As such, a complete ban would negate the need for this provision in the law as well as a constitute a method by which the protection of children can be expanded as any sexual relations of this nature would be legally condemnable. Presumably, by doing this, the likelihood of those engaging in sexual relations with minors above the age difference allotted by the federal law would decline due to the lack of legal remedies available for these perpetrators to avoid prosecution in addition to further legal protection of minors.

In addition, the placement of an age floor on marriage would preclude emancipated minors from obtaining this right. Due to an emaciated minor being granted limited legal capacities allowing them to enter into contractual obligations, the issuance of an age floor would deny them a

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<sup>143</sup> New Jersey Assembly Bill 3091- NJ A3091 1R

<sup>144</sup> Supra 2.

<sup>145</sup> Levesque, Roger J.R. “Chapter 4: Defining Maltreatment and Permitting Startlingly Broad State Intervention.” *Child Maltreatment and the Law*. pp.61-78. p. 67.

<sup>146</sup> Supra 33.

fundamental right as recognized by the USA judicial system. Therefore it can be argued that it would be against their constitutional rights as granted under the 14th amendment<sup>147</sup> to implement legislation which would prevent them from entering a specific contractual obligation due to their age when they have been court approved to undertake contractual obligations of other natures, which may be more important to their lives. It is possible to dissolve a marriages by getting a divorce while financial debts present lifelong obligations which the judiciary of their state had already determined they were mature enough to undergo upon the dissolution of parental rights of their prior legal guardians.

Through the promotion of marriage as an institution by which only adults should be sanctioned to enter, it would be preserved as a holy space for those who truly love each other and have made the conscious decision to undergo the lifetime commitment. However, those within conservative Christian communities which preserve the traditional right to child marriage would argue that such a ban would infringe upon their constitutional rights as granted under the first amendment. As mentioned in the previous section, within the conservative Christian faith it is felt that marriage is a sacrament within which the foundations for a family should be based<sup>148</sup>. It is believed that through the national ban of child marriage excluding exceptions undermine the fabric of their cultural rights. As such, the placement of an age floor has the ability to subject those who given birth as well as born out of wedlock into a life of sin.

Overall such a legislative ban on marriage under the age of majority would be beneficial for the protection of children and an internationally accepted application of the UDHR. However, an enactment of this kind has the potential to lead to a backlash from conservative Christian communities regarding the right to marriage and the imposition of the state involvement regarding a private matter within a citizens life. As such a possible negative effect would be Marriage tourism whereby parties could travel to a country in which the age of marriage is 16 so long as there is parental permission, such as Canada<sup>149</sup>. By doing this the USA would be compelled to either allow the marriage to stand, or impose punitive fees or criminal liability regarding the internationally sanctioned marriage.

### **3.1.2 Religious and Social Outreach**

Religious outreach would be individual state's governmental initiative to gather a study group of Christian religious leaders in order to discuss the proper methodology by which to impart the dangers of child marriage alongside the implementation of state-based monetary incentives for communities to create an open dialogue within church groups regarding the importance of waiting to be married when both parties have attained the age of majority. This method would use minimal state intervention within marriage, thus maintaining the sanctity of the union. The movement against child marriage would originate within the realm of religious persuasion.

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<sup>147</sup> Supra 56.

<sup>148</sup> Supra 138. p. 1.

<sup>149</sup> "Canada." *Girls Not Brides*. Accessed April 27, 2018. Web.  
<https://www.girlsnotbrides.org/child-marriage/canada/>.

This method is not backed by state or federal legislation, thus leaving it within the legal capacity of the conservative Christian entity to choose the method by which they promote the importance of waiting for marriage until the age of majority. However, economic incentives to implement an open communication regarding the drawbacks of child marriage would be targeted towards the improvement of infrastructures held to be important to the community as well as serving as an incentive for churches to prevent the use of marriage as a cover-up for statutory rape allegations. By doing this, there would be a higher stigmatization placed upon the remedial effect of marriage when there has been misconduct within the church regarding a minor, the implementation of a social standard in which these relations are deemed not appropriate as it would be lacking the consent of the church and community overall.

Within the new testament, there is not an age expressed by which an individual should not be allowed to be married prior to ascension. Moreover 1 Corinthians 7:9 states

“But if they do not have self-control, let them marry; for it is better to marry than to burn with passion.<sup>150</sup>”.

As such this method is reliant upon communication between the state and the religious heads of the churches in order to create a rhetoric which is agreed upon by each party thus creating a concentrated group effort from the bottom up<sup>151</sup>.

In addition to religious outreach, the state and federal governments have the ability to provide similar economic compensation to public schools. Therefore creating an incentive for the promotion of education which focuses upon minors advocating for themselves in addition to learning about legal options which they have access to, and their rights under the constitution. Programs such as these would emphasis gender equality as well as sexual education which goes beyond abstinence regarding safe sex practices, what constitutes as consent and age-appropriate sexual relationships between individuals regarding the age at which they are able to give consent in line with state and federal regulations. As such any romantic relationships which go beyond these grounds are shown as against the suitable conduct regardless of the familial or social pressure to continue these matches. Thus minors would be granted the opportunity to recognize the aspects which set positive relationships apart from those which have a negative impact upon their futures.

Dissidence to the promotion of these school programs would be found within parents of conservative Christian communities which believe that sexual education should be reserved for the promotion of abstinence-only to prevent children from becoming sexually active before marriage<sup>152</sup>. Therefore it would be within the right of these individuals to withhold their children from these classes, thus promoting the social values found within their own faith.

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<sup>150</sup> “Young Marriage.” *Knowing Jesus*. Accessed April 29, 2018. Web. <https://bible.knowing-jesus.com/topics/Young-Marriage>.

<sup>151</sup> “The Rights of Children: Public Policy Statement.” *Medical Anthropology Quarterly*. Vol. 21 (2) pp. 234-238. p. 236.

<sup>152</sup> *Supra* 107. p. 1214.

These approaches on the religious and public educational sectors would need to be implemented in conjunction with each other in order to maximize the realization of the desired effect. While this approach highlights the importance of the cultural right of the conservative Christian community, the lack of a legislative remedy upon either the state or federal level does not promote the complete cessation of child marriage. An option would be for the state to implement a provision within the marriage legal code stipulating that whoever allows the marriage license to go forth, must talk privately with the minor in question regarding whether or not they want to be married. In this way, the minor is granted the opportunity to inform social authorities of their true feelings regarding the situation, outside from the social pressure of their legal guardian, community members or intended spouse to grant the public official as genuine an answer as possible regarding their consent to the union.

### 3.1.3 Hybrid Approach

This approach would be the reconciliation of legislative efforts on the federal and state scale in addition to the necessity within the USA for Christian rights not to be impeded upon. As such this approach would rely upon alleviating the consequences of child marriage. If these legislative agendas detailed below are adapted in conjunction with the societal or religious agenda outlined above, child marriage will not have a full out ban or a lack of legislation but rather a framework which works towards a stigmatization of the practice on a social level in conjunction with the expansion of minors rights through the opening of legal opportunities available to those who do decide to be married below the age of majority.

Educational responsibilities would be stated within additional state regulations under which it would be mandated that all minors must continue their education until the age of 18. By preventing minors from dropping out of school at the ages currently stipulated by states, the further education of minors is ensured. Girls who are married below 19 are 50% more likely to drop out of school<sup>153</sup>, thus decreasing their chances of getting a job granting them a higher salary, therefore, leading to an increase by 31% that these individuals will live in poverty<sup>154</sup>. Through the stipulation that no minor is allowed to drop out of high school, those who are married prior to graduation are given more options regarding their futures outside of marriage as each additional year of education increases the earning potential of individuals by 10-20%<sup>155</sup>, additionally the longer an individual has access to education the less likely they will marry early as there are more future opportunities open to them<sup>156</sup>. An added benefit of mandatory education is that should there be any issues between the couple, the minor has a state mandate keeping them

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<sup>153</sup> Belanger, Ashley. "Child Marriage in the U.S., Explained by a Former Child Bride." *Teen Vogue*. September 6, 2017. Accessed April 29, 2018. Web.  
<https://www.teenvogue.com/story/child-marriage-in-the-us-explained-by-a-former-child-bride>.

<sup>154</sup> Supra 124. p. 3.

<sup>155</sup> Supra 136. p. 10.

<sup>156</sup> Supra 133. p.3.

within an institution which has avenues for them to get help should they need it thus addressing the CRC's encouragement for easy-access remedies for minors<sup>157</sup>.

Primarily it would be necessary for the implementation of legislation stating that upon the entry of a minor to the institution of marriage they must first be questioned privately regarding their consent to the marriage in accordance with maturity levels, and understanding of the legal obligations and rights which are obtained when entering a marriage<sup>158</sup>. Should the marriage be in their own perceived best interest with judicial and parental consent, the minor in question would be granted emancipation with a limited legal capacity relating solely to their right to vote at 18, drink at 21, or other educational responsibilities as stipulated by the state in which they reside. By ensuring that all minors who are married within the regulations set forth by the state are emancipated, the state is granting them the ability to enter a contract an attorney regarding a divorce if they so wish, turn to an NGO for assistance, as well as have the ability to seek refuge in women shelters<sup>159</sup>.

In order to maintain the availability of these legal avenues, the state would incorporate a database within which there are photo identification and fingerprints of all married minors which police, shelters and NGOs working to support these individuals have been granted access. By incorporating such a policy the state ensures the safety of the minor should the marriage not work out in a hospitable manner. As such the minor would have the ability to seek safety at any of these institutions without documentation and be granted the ability to be assisted in means which are appropriate to the situation. Through the implementation of these safeguards, the marriage of a minor would take into account measures social authorities being responsible for the best interest of the child, regardless of their emancipation status<sup>160</sup>.

This approach does not fully combat the institution of child marriage but it would stem the consequences of the tradition through the promotion of continuing education, expansion of legal options to leave a harmful marriage and increases the economic options open to these individuals. The downsides would be the same as mentioned within the religious and social approach; additionally should a minor have a child of their own, mandatory attendance at school would prove to be difficult if not nearly impossible. Therefore it would be necessary for states to allocate funds to either assist with child care facilities or homeschooling options which provide similar dynamic regarding the promotion of education and outreach models through which any health or abusive marital concerns can be reported in a safe environment. Through the incorporation of this initiative, the USA would be applying measures to cease child marriage thus initiating policies which are in line with the international conventions and UDHR in regards to taking measures to prevent child marriage.

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<sup>157</sup> Supra 122. p. 7.

<sup>158</sup> Herbots, Katrien and Johan Put. "The Participation Disc" *International Journal of Children's Rights*. Vol. 23. 2015. pp.154-188. p. 161.

<sup>159</sup> Supra 138. p. 13.

<sup>160</sup> Supra 39. p.761.

## 3.2 How to Alleviate the Tension between USA legislation and International Law

The USA has a history of signing international conventions without having the ability to achieve ratification on the home front<sup>161</sup>, as such the country has fallen behind other developed nations in terms of human rights, especially in regard to child marriage. In order for the USA to reconcile with the international community on this issue the nation will need to acknowledge that child marriage is a human rights violation condoned within the USA, incorporate the provisions of the UDHR and ratify the CRC, CEDAW and CMMRMAM, followed by the implementation of infrastructures initiatives found within the foreign policy of the USSD to address the problem upon the domestic scale.

### 3.2.1 Acknowledgement

Primarily the USA needs to acknowledge that the continuation of child marriage being practiced within the nation is a setback to the maintenance of human rights in the USA. Through this admission, the international perception of the USA as hypocritical, regarding the policies it promotes yet does not fulfill<sup>162</sup>. By admitting that the USA has a human rights issue regarding child marriage, other nations will be granted the opportunity to step forward with assistance regarding implementation methods utilized within their own nations. Opening up the legislative process to international scrutiny allows for the laws implemented within the USA to be based upon the trials and tribulations faced within those nations.

As such, countries in which child marriage is also held as a cultural right among religious groups may have advice which can be beneficial to reconciliation with conservative Christian cultural rights to marriage and human rights legislation. Though this standpoint permits the continuation of human rights abuses in the form of child marriage, due to the reliance upon the right to privacy within family life<sup>163</sup>. Thus this belief that a right to privacy does not permit the government of the USA to interfere within the application of familial values extends into a mistrust of international involvement in domestic politics.

However through admitting that there are human rights violations being committed within the USA with the support of governmental institutions is an important step towards national regulations to work towards the cessation of these violations. By bringing awareness to the issue of child marriage on an international level, the domestic sphere will take note through critical comparison between the USA and nations in which the rates of child marriage are lower, thus having the possible effect of citizens realizing that there is a need for a change to the politics regarding child marriage.

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<sup>161</sup> Supra 123. p. 3910.

<sup>162</sup> Supra 6. p. 171.

<sup>163</sup> Polonko, Karen A. and Lucien X. Lombardo. "Non-Governmental Organisations and the UN Convention on the Rights of the Child." *International Journal of Children's Rights*. Vol. 23. 2015. pp. 133-153. p. 135.

### 3.2.2 Ratification of Conventions

As stated in article 6 of the Constitution, international agreements which have been ratified by Congress are henceforth the supreme law of the land<sup>164</sup>. As such through the ratification of the conventions in which the USA is currently only a signatory country, has the potential to drastically shift the legal environment of the domestic legislation as pertaining to child marriage should state and federal legislative powers subscribe to the proper application of this principle. The UDHR is the international declaration pertaining to human rights of USA citizens, however, in regards to child marriage, it has not been applied accurately.

The USA has promoted the partial protection of Article 16.1 in which individuals have the right to marry, without extending protections pertaining to minors<sup>165</sup>. As the full age requirement is fulfilled in the USA when an individual achieves the age of 18 as stated in 18 U.S. Code § 2256<sup>166</sup>, it is therefore against a ratified international convention for those below this age to be married. As such the continuation of the practice of child marriage is illegal as it goes against the supreme law of the land. As such it is necessary for the USA to go beyond ratification of the UDHR through the complete application and enforcement of these principles within the nation.

The ratification process has not been successful for the CRC, CEDAW, or CCMMAMRM, a primary necessity for the USA. The protection of the human rights of children would be furthered nationally through the federal legislative acceptance of these conventions. Through the ratification of the CCMMAMRM and CEDAW, child marriage would still be a viable option for individuals who believe that the practice has cultural significance. Outside of the application of the UDHR, the ratification of these conventions solely within the nation in question states a promise to work towards the elimination of child marriage<sup>167</sup>. This vagueness can be interpreted by the government actively working towards this goal or passively through the continuation of studies denoting the negative consequences of the practice. Additionally, the conventions allow for the state to specify at which age an individual is able to enter a marriage. Even within the application of CEDAW under article 16.2 stating, “the betrothal and marriage of a child has no legal effect [...]”,<sup>168</sup> there is no definition of “child” or minimum age regarding when these individuals are no longer minors<sup>169</sup>. As such, the ratification of these conventions is unlikely to create a drastic change in domestic legislation as the power of national legislation is not limited as pertaining to child marriage.

Regarding the CRC, the ratification of this convention has the potential to extend the protection of minors under national law, however due to the wording of the convention stating that the state

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<sup>164</sup> Supra 17

<sup>165</sup> Supra 1.

<sup>166</sup> Supra 31.

<sup>167</sup> Supra 7. Art. 16.1.

<sup>168</sup> Supra 7. Art 16.2

<sup>169</sup> Supra 6. p. 157.

must “take measures” to protect children from forms of discrimination is vague thus allowing for the interpretation of such language to allow the continuation of child marriage should public officials deem the practice is not discriminatory. This can be derived on the basis that female minors are not being married disproportionately but rather it would be discriminatory to the cultural rights of the individuals in question, for the marriage to not go forward. Therefore the ratification of the CRC has the potential to eliminate child marriage, however, the application of the principles within the convention is at the discretion of the government. As such ratification would appease the International community without needing to drastically change the legal landscape of the USA.

Should ratification of the CRC, CEDAW and CCMMAMRM occur there would be outcry among those who hold the importance of parental rights over children as it would be seen as an infringement upon those conservative Christian cultural rights, due to restrictions placed by the said conventions upon minors marrying, thus upholding a common belief that the international sphere should not intrude within domestic politics<sup>170</sup>. However, due to the lack of the complete application of the UDHR within the USA, it is doubtful that should these conventions be ratified that there would be drastic changes within the nation should they change anything at all. Based solely upon the wording of these conventions, the International community also has a far way to go in the fight for protecting minors from child marriage. Additionally, the ratification process of the USA needs to be revised as a state should not be able to be a signatory party without plans of ratification. Furthermore, should a convention be ratified, the principles enshrined in the document should be fully applicable to the actions of citizens and the government in the nation.

### **3.2.3 Implementation of the USSD Global Initiative**

It would be beneficial for the USA to implement the Global Strategy to Empower Adolescent Girls<sup>171</sup> on the domestic level. Through cooperation with international organizations, the USA will be able to demonstrate their determination to advocate for female minors around the world and combat child marriage. The application of the objectives enshrined within the foreign policy is applicable not only within developing countries but also in the USA. This policy defines Child, Early and Forced marriage as, “A formal marriage or informal union where one or both parties is under the age of 18.<sup>172</sup>,” going so far as to note the legal prohibitions to the practice which are not properly enforced internationally, without going so far as to mention that the USA is one of these nations. The objectives outlined in the policy display the manner in which the USA will assist nations to eliminate child marriage. As such this strategy should additionally be implemented within the USA, a nation should not promote a policy within the domestic sovereignty of a nation if they are not ready to implement it within their own in order to promote gender equality and empowerment of women<sup>173</sup>.

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<sup>170</sup> Supra 6. p. 171.

<sup>171</sup> Supra 62.

<sup>172</sup> Ibid, p.5.

<sup>173</sup> Supra 64. p.15.



As such the policy states that the protection of girl's rights through legal frameworks strengthening a minor's right to justice, equality with males, increased access to education and medical facilities in addition to the prevention of child marriage through judicial training programs or policies forces specialized in such cases. The USA should implement these tools within the USA as it would promote the protection of children, especially those who have already been subjected to the tradition of child marriage. However, due to the cultural rights of those who marry early in addition to the protection of marriage and the right to privacy within these regards, the likelihood that a trained forced for the sole purpose of protecting married minors is unlikely. The USA promotes a policy on foreign soil which would never be applied within their own jurisdiction.

## Conclusion

Throughout this thesis two opinions regarding the debate of child marriage have been explored, those who uphold human rights ideals, thus defining child marriage as a harmful cultural tradition, and those who believe that the continuation of this practice is intrinsic to practicing their right to freedom of religion within conservative Christian communities in the USA. The tension between these two sides has been explored in relation to how the institution is a point of contention within how these rights are interpreted and can come together to find a solution which benefits both parties.

In part 1, it was determined that the international legal parameters for the marriage of minors as defined by the UDHR, CCMMAMRM, CEDAW and CRC, are insufficient. This is due to the use of vague language pertaining the age of minors, and allowance for states to set their own mandates regarding the age at which an individual can consent to a marriage. However a precedent was set stating that it is against the human rights of minors for them to be married below the age of 18, though it is as the discretion of states which have ratified the conventions to take appropriate measures towards the cessation of the practice. It was established that the USA has not ratified these international conventions, deciding instead to keep the international communities influence at a distance in deference to the state's right to determine laws pertaining to marriage as there the cultural practices of constituents to consider.

The second part of the thesis explored the permeation of Christian legal traditions within the USA, building on the concept of international laws pertaining to the protection of cultural rights in regard to conservative Christians. It was found that the morals found within Christianity have had an impact upon the continuation of legislative decisions regarding the institution of marriage. In this light, child marriage was found to continue as an extension of the fundamental right for individuals to marry as well as a way by which to preserve the cultural beliefs of abstinence and giving birth to children within wedlock found within these communities. It was further found that the Supreme Court has ruled in the favor of these beliefs through the maintenance of marriage as the foundation in which familial rights occur thus portraying the cultural significance of marriage. Following this, it was established that the sociological impact of child marriage negatively impacts the minor as it limits their ability to seek legal reparations and gain an education.

The third part of this thesis looked at the manner in which the tension between these two points of view can be elevated. It expands upon methodology which could be implemented within the domestic legislation of the USA, in three ways, primarily in line with those from the human rights perspective with an outright ban on child marriage which would impact those who subscribe to the tradition as a cultural right. A second method was examined which took a grassroots perspective, implementing the use of churches for community outreach regarding the importance of waiting until an individual is of age until they are married, in addition to the importance of public school education imparting the importance of minors continuing their education.

On the international level, it was argued that in order for the USA to redeem itself within the international community, the nation needs to acknowledge the existence of child marriage within the nation, implement international conventions, and take into account the initiatives set forward in the USSD's Strategy to Empower Adolescent Women, when creating national legislation within the same format as a method by which to cease the continuation of child marriage. As such, this final part of the thesis concluded with the idea that in order for the tension to be relieved within the USA between the two sides of the argument regarding child marriage, it is necessary to take both the interactional human rights ideal into perspective in conjunction with the domestic sphere as pertaining to the conservative Christian faction.

In conclusion, in order to remedy the problem of child marriage, the marriage laws of the USA need to be reevaluated, with a focus upon the causes which perpetuate the institution and the methods by which the US can remedy the consequences. It is plausible that through taking a legal avenue which incorporates the USSD foreign policy into the domestic legal framework, change can occur regarding child marriage.

As child marriage has been perpetuated within the USA due to the belief that government involvement should not extend within the private confines of marriage, amending laws governing external forces surrounding the union would be beneficial to the protection of the minor in question. These would include but not be limited to the extension of statewide education standards, the strengthening of judicial protection in regards to allowing a union to go forward, and the emancipation of minors upon entering marriage. By taking these precautions, the rights of minors would no longer be limited through the express application of parental rights which are not always applied within the parameters of the best interest of the child.

Marriage is a fundamental right in the USA which should continue to be protected as a right reserved for those who are mature enough to take on the legal obligations which it entails. As such, this institution should be preserved for those who have attained the age of majority or would be granted the ability to be an emancipated minor outside the union of marriage. Through this application of the preservation of marriage being reserved for those who have been deemed mature enough to enter the institution by either judicial approval or through age, the sanctity of the sacrament of marriage as defined by conservative Christian ideals would be maintained.

Christianity has had an important role in the creation of USA law, however with the presence of conservative Christian values within groups perpetuating child marriage has led to a stagnation in the development of legislation protecting minors from the negative aspects of this cultural practice. As such it is important to combine the cultural beliefs of these individual groups and legal remedies which do not intrude upon the religious freedoms upheld by the first amendment of the Constitution. However, with the continuation of exceptions within marriage regulations as defined by the state legislative and federal legal codes, the USA is neglecting its international responsibilities through allowing harmful cultural rights to be perpetuated within the nation. As such it is important for the government to implement legal procedures which will take into account these responsibilities in addition to those which are due to their citizens.

Furthermore, to answer the hypothesis of this thesis, it has been shown that the existing marriage laws within the USA encompass conservative Christian ideals thus preventing the abolition of child marriage and moreover allowing for the infringement upon the individual rights of minors as prescribed under international conventions. It is unlikely that the practice will stop completely with the application of new regulations upon the institution of marriage when pertaining to those who are under the age of majority, however through their application it would be possible to decrease the number of those who are unwittingly agreeing to be subject to marriage. However, on the 10th of May, Delaware became the first state to close all legal loopholes which allowed the continuation of child marriage<sup>174</sup>, thus creating a standard which all other states should emulate and showing promise for the future.

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<sup>174</sup> Thomsen, Jacqueline. "Delaware Becomes First State to Ban Child Marriage." *The Hill*. May 10, 2018. Accessed 16 May, 2018. Web.  
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